

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Civil No.

HASKELL CHEMICAL COMPANY, INC.;

HH, INC., a dissolved corporation;

RICHARD H. B. HASKELL, as co-trustee of the
Liquidating Trust for Assets and Liabilities of
HH, Inc.;

and

ANN H. HASKELL, as co-trustee of the
Liquidating Trust for Assets and Liabilities of
HH, Inc.

Defendants.

CONSENT DECREE

I. BACKGROUND	1
II. JURISDICTION	2
III. PARTIES BOUND	2
IV. DEFINITIONS	3
V. STATEMENT OF PURPOSE	5
VI. PAYMENT OF RESPONSE COSTS	5
VII. FAILURE TO COMPLY WITH CONSENT DECREE	7
VIII. COVENANT NOT TO SUE BY PLAINTIFF	9
IX. RESERVATION OF RIGHTS BY THE UNITED STATES	10
XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION	13
XII. ACCESS TO INFORMATION	14
XIII. RETENTION OF RECORDS	16
XIV. NOTICES AND SUBMISSIONS	18
XV. RETENTION OF JURISDICTION	19
XVI. INTEGRATION/APPENDICES	19
XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	19
XVIII. EFFECTIVE DATE	20
XIX. SIGNATORIES/SERVICE	20
XX. FINAL JUDGMENT	21

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HASKELL CHEMICAL COMPANY, INC. and
HH, INC., a dissolved corporation;
RICHARD H. B. HASKELL, as co-trustee of the
Liquidating Trust for Assets and Liabilities of
HH, Inc.;

and

ANN H. HASKELL, as co-trustee of the
Liquidating Trust for Assets and Liabilities of
HH, Inc.

Defendants.

Civil No.

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607, seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the HH Burn Pit Superfund Site in Hanover County, Virginia ("Site").

B. The defendants that have entered into this Consent Decree (collectively, "Settling Defendants") deny any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. The Settling Defendants have represented that they have previously contributed the combined sum of five hundred thousand dollars (\$500,000) to the members of the HH, Inc. Superfund Site Group in order to help pay for response actions at the Site.

D. The United States has reviewed the Financial Information submitted by the Settling Defendants to determine whether Settling Defendants are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendants are able to pay the amounts specified in Section VI.

E. The United States and the Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607(a) and 9613(b) and also has personal jurisdiction over the Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree, or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way

alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*
- b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "Defendant Haskell Chemical Company" shall mean the Haskell Chemical Company, Inc. currently doing business in that name in the Commonwealth of Virginia.
- e. "Defendant HH, Inc." shall mean the dissolved Virginia corporation, HH, Inc., dissolved on or about November 1987; and Richard H. B. Haskell and Ann H. Haskell, in their capacity as trustees for the Liquidating Trust for Assets and Liabilities of HH, Inc.
- f. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- g. "EPA" shall mean the United States Environmental Protection Agency and any

successor departments, agencies or instrumentalities of the United States.

h. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

i. "Financial Information" shall mean those financial documents identified in Appendix A.

j. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

k. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

l. "Parties" shall mean the United States and the Settling Defendants.

m. "Plaintiff" shall mean the United States.

n. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

o. "Settling Defendants" shall mean both Defendant Haskell Chemical Company and Defendant HH, Inc., as defined above.

p. "Site" shall mean the HH Burn Pit Superfund site, located at in the vicinity of Staples Mill Road, near Farrington, Hanover County, Virginia, and generally shown on the map included in Appendix B.

q. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants to make cash payments to settle their liability for the Site as provided in the Covenant Not to Sue by Plaintiff in Section VIII, and subject to the Reservation of Rights by the United States in Section IX.

VI. PAYMENT OF RESPONSE COSTS

5. Settling Defendants shall make the following payments:

a. Defendant Haskell Chemical Company shall deposit by August 20, 2003 one hundred thousand dollars (\$100,000) into a Business Investors Deposit Account ("Account") established by the Clerk of the Court in accordance with terms of the Stipulation and Order Directing Deposit of Funds into a Business Investor's Deposit Account, attached as Exhibit 1 hereto.

b. Defendant HH, Inc. shall deposit by August 20, 2003 two hundred thirty-five thousand dollars (\$235,000) into an Account established by the Clerk of the Court in accordance with terms of the Stipulation and Order Directing Deposit of Funds into a Business Investor's Deposit Account, attached as Exhibit 1 hereto.

c. Upon entry of this Consent Decree, the \$100,000 paid by Defendant Haskell Chemical Company, the \$235,000 paid by Defendant HH, Inc., and all accrued interest in the Account, less the Clerk's Registry Assessment fee shall be paid by check payable to "U.S. Department of Justice" and shall be delivered to the attention of the "Financial Litigation Unit,

6

U.S. Attorney's Office, 101 West Main Street, Suite 8000, Norfolk, Virginia, 23510," referencing the USAO File Number 2003V01036, the EPA Region III and Site Spill ID Number 03N7, and DOJ Case Number 90-11-3-1408/2. The disbursement of funds from the Account shall be made in accordance with instructions provided to the Clerk of the Court by the Financial Management Unit of the U.S. Attorney's Office in the Eastern District of Virginia; such instructions shall be provided upon entry of the Consent Decree.

d. At the time of the disbursement of funds from the Account, the Clerk shall send written notice of payment and a copy of any transmittal documentation to EPA and DOJ at the addresses set forth in Section XIV, and simultaneously to:

Docket Clerk (3RC00)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

e. If the Court returns the balance of the Business Investors' Deposit Account ("Account") to Settling Defendants prior to the entry of this Consent Decree, and this Consent Decree is later entered, the Settling Defendants shall pay to the United States, in addition to any other payments required by this Consent Decree, and in accordance with the procedures set forth in the seventh through ninth sentences of Paragraph 6 and Paragraph 7 of this Consent Decree, an amount equal to the balance of the Account that was returned to them.

6. Defendant Haskell Chemical Company shall, in addition, pay directly to the EPA Hazardous Substances Superfund the principal sum of \$200,000, plus an additional sum for Interest as explained below. Payment shall be made in two annual installments. Each

installment shall include the principal amount due plus an additional sum for accrued Interest on the declining principal balance calculated from the effective date of this Consent Decree. The first installment of \$100,000 plus interest shall be due one (1) year from the entry of this Consent Decree. The second and final installment of \$100,000 plus interest shall be due two (2) years from the entry of this Consent Decree. Settling Defendants may accelerate these payments, without penalty, and Interest due on the accelerated payments shall be reduced accordingly. Payments shall be made by FedWire Electronic Funds Transfer ["EFT"] to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2003V01036, EPA Region III and Site Spill ID Number 03N7, and DOJ Case Number 90-11-3-1408/2. Payments shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Eastern District of Virginia following lodging of this Consent Decree. Any payment received by the Department of Justice after 4:00 p.m. (Eastern Time) shall be credited on the next business day.

7. At the time of each payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions).

8. The total amount of each payment to be paid pursuant to Paragraphs 5 and 6 shall be deposited in the EPA Hazardous Substances Superfund.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

9. Interest on Late Payments. If Settling Defendants fail to make any payment under Paragraph 5 or 6 by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount has been received.

10. Stipulated Penalty.

a. If any amounts due under Paragraphs 5 or 6 are not paid by the required date, the Settling Defendant failing to make such payment shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the interest required by Paragraph 9, \$500 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within thirty (30) days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by cashier's or certified check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making the payment, the Site name, EPA Region III and Site Spill ID Number 03N7, and DOJ Case Number 90-11-3-1408/2, and shall be sent to:

U.S. EPA Region III
ATTENTION: Superfund Accounting
Box 360515
Pittsburgh, PA 15251-6515

c. At the time of each payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States brings an action to enforce this Consent Decree, the Settling Defendants shall reimburse the United States for all costs of such action including, but not limited to, costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of the stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

VIII. COVENANT NOT TO SUE BY PLAINTIFF

14. Covenant Not to Sue by United States. Except as specifically provided in Section IX (Reservation of Rights by the United States), the United States covenants not to sue or take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to the present and future liability of Settling Defendants, this covenant shall take effect upon the effective date of this consent decree. This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information

provided to EPA by Settling Defendants. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate for either Settling Defendant, such Settling Defendant shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 21 shall be null and void as to such Settling Defendant. EPA shall not find the Financial Information false or inaccurate merely because Settling Defendants' projections of future economic performance do not come true, so long as EPA concludes that such projections were prepared in good faith using best industry accounting practices. Moreover, this covenant and the contribution protection in Paragraph 21 shall not be nullified merely because tax returns prepared by a third party on behalf of one or more Settling Defendants contained errors or omissions, so long as EPA, in its unreviewable discretion, concludes both that such errors or omissions were immaterial and that Settling Defendants neither knew nor had reason to know of such errors or omissions. Forfeiture of payments made pursuant to this Consent Decree shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other courses of action arising from such Settling Defendant's false or materially inaccurate information. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

IX. RESERVATION OF RIGHTS BY THE UNITED STATES

15. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters not expressly included within the Covenant Not to Sue by United States in Paragraph 14. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

a. liability for failure of any Settling Defendant to meet a requirement of this Consent Decree (for the purposes of this subpart only, "all rights" shall mean all rights to enforce this Consent Decree);

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability based upon Settling Defendants' ownership or operation of the Site, or upon Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendants; and

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant or contaminant outside of the Site.

16. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Settling Defendants, or the financial certification made by Settling Defendants in Paragraph 28, is false or, in any material respect, inaccurate.

X. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

17. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113, of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law, or;
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 19 (Waiver of Claims) and Paragraph 23 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 15 (c) - (e), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

18. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 400 C.F.R. 300.700(d).

19. Settling Defendants agree not to assert any CERCLA claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any other person.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

20. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as set forth in Paragraph 19, each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

21. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as is provided by section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

22. Settling Defendants agree that with respect to any suit or claim for contribution brought by either of them for matters related to this Consent Decree, such Settling Defendant will notify EPA and DOJ in writing no later than forty-five (45) days prior to the initiation of such suit or claim. Settling Defendants also agree that, with respect to any suit or claim for contribution brought against either of them for matters related to this Consent Decree, such

Settling Defendant will notify EPA and DOJ in writing within ten (10) days of service of the complaint or claim upon it. In addition, Settling Defendants shall notify EPA and DOJ in writing within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

23. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue by Plaintiff set forth in Section VIII.

XII. ACCESS TO INFORMATION

24. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

25. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent

permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Documents or information determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendants.

b. Settling Defendants may assert that certain documents, records or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing documents, they shall provide Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no documents, records or other information created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

c. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIII. RETENTION OF RECORDS

26. Until ten (10) years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which comes into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

27. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records or documents to EPA. Settling Defendants may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, it shall provide Plaintiff with the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted. However, no documents, records or other information created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the

grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

28. By signing this Consent Decree, each Settling Defendant certifies that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against such Settling Defendant regarding the Site;

c. fully complied with any and all EPA requests for information regarding the Site and Settling Defendant's financial circumstances pursuant to Sections 104(e) and/or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and/or 9622(e); and

d. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed

between the time the Financial Information was submitted to EPA and the time Settling Defendant executes this Consent Decree.

XIV. NOTICES AND SUBMISSIONS

29. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and DOJ, respectively.

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-1408/2

As to EPA:

Andrew S. Goldman (3RC41)
Sr. Assistant Regional Counsel
1650 Arch Street
Philadelphia, PA 19103-2029

Barbara Borden (3PM30)
Office of the Regional Comptroller
1650 Arch Street
Philadelphia, PA 19103-2029

As to Settling Defendants:

Richard H. B. Haskell, President
Haskell Chemical Company
P.O. Box 9670
6119 Staples Mill Rd.
Richmond, VA 23228

with a copy to:

David Shane Smith
P.O. Box 27828
Richmond, VA 23261

XV. RETENTION OF JURISDICTION

30. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION/APPENDICES

31. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is a list of the Financial Information provided by Settling Defendants to Plaintiff; "Appendix B" is a map generally depicting the Site; and "Exhibit 1" is an Stipulation between the United States and Settling Defendants.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

32. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

33. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XVIII. EFFECTIVE DATE

34. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XIX. SIGNATORIES/SERVICE

35. The undersigned representative of each Settling Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certify that they are authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

36. Settling Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

37. Each Settling Defendant shall identify, on the attached signature pages, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XX. FINAL JUDGMENT

38. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS _____ DAY OF _____, 20__.

United States District Judge

21a

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Haskell Chemical Company, Inc., et al., Civ. No. _____, relating to the HH Burn Pit Superfund Site.

FOR THE UNITED STATES OF AMERICA

THOMAS SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date

7/28/03

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Date

DANIEL S. SMITH
NANCY FLICKINGER
Attorneys
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

PAUL J. MCNULTY
UNITED STATES ATTORNEY

Date

7/30/03

By: _____
Robert P. McIntosh
Assistant United States Attorney
Office of the United States Attorney
1800 Main Street Centre
600 East Main Street
Richmond, Virginia 23219
Telephone: (804) 819-7404

22

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Haskell Chemical Company, Inc., et al., Civ. No. _____, relating to the HH Burn Pit Superfund Site.

FOR THE UNITED STATES OF AMERICA

THOMAS SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date

DANIEL S. SMITH
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Date

ROBERT P. MCINTOSH
Assistant United States Attorney
Eastern District of Virginia
1800 Main Street Centre
600 East Main Street
Richmond, Virginia 23219

Date

DONALD WELSH
Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Date

ANDREW S. GOLDMAN
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

4/24/03

23

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Haskell Chemical Company, Inc., et al., Civ. No. _____, relating to the HH Burn Pit Superfund Site.

FOR HASKELL CHEMICAL COMPANY, INC.,

6/12/03
Date

Signature: _____

Name (print): H. HASKELLTitle: PresidentAddress: 6119 Staples Mill Road
Richmond, VA 23228

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): DAVID SHANE SMITHTitle: Registered AgentAddress: 1051 E. Cary StreetSuite 1206Richmond, Virginia 23219Phone Number: (804) 771-5720

24

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Haskell Chemical Company, Inc., et al., Civ. No. _____, relating to the HH Burn Pit Superfund Site.

FOR HH, INC.

6/12/03
Date

Signature: _____

Name (print): HASKELLTitle: MANAGERAddress: 6119 STAPLES MILK RD.
RICHMOND VA 23228

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): DAVID SHANE SMITHTitle: REGISTERED AGENTAddress: 1051 E. CARY ST.
SUITE 1206
RICHMOND, VA 23219Phone Number: (804) 771-5722

**APPENDIX A: FINANCIAL DATA AND INFORMATION
PROVIDED TO PLAINTIFFS**

For Defendant Haskell Chemical Company:

1. Financial information contained in the letter dated May 7, 2001 from David Shane Smith to James A. Williams, EPA. This letter also enclosed the following information:

- A completed "financial statement of corporate debtor" signed by Richard H.B. Haskell, President on 5/7/01.
- The balance sheet and Income statements of Haskell Chemical Co., Inc. for the twelve months ending September 30, 1999 and September 30, 2000.
- The Depreciation Expense report as of 9/30/2000 for Haskell Chemical Company.
- A copy of the agreement creating the Liquidating Trust for Assets and Liabilities of HH, Inc.
- A supplement to the HH Site Participation Agreement and pursuant to that agreement a print out dated 5/02/01 showing the payments made to Hatcher-Sayer.
- U.S. Corporation Income tax returns of Haskell Chemical Co., Inc. for the fiscal years ending September 30, 1996 through September 30, 2000.

2. A July 10, 2001 letter from David Shane Smith to James A. Williams responding to EPA's demand letter and explaining the Haskell Trust's obligation to the other PRP's.

3. From the January 14, 2002 letter from David Shane Smith to Robert H. Miller, DOJ:

- Exhibit I which is the one page operating results for Haskell Chemical Company for the fiscal years ending 9/30/99 through 9/30/2001.
- Exhibit J which is the one page estimated pro-forma operating results for the periods ending 9/30/2002 through 9/30/2004.

4. A faxed letter dated February 12, 2002 from David Shane Smith to Jim Williams, EPA enclosing the Income Statement for Haskell Chemical Co., Inc. for the three months ended

December 31, 2001.

5. A fax letter from: David Will of Mitchell Wiggins & Company (accountants for Haskell Chemical Company) dated February 28, 2002, enclosing an income statement for the year ended September 30, 2001.

6. A letter dated March 11, 2002 from David Shane Smith to Robert H. Miller, DOJ; including an offer of settlement and commenting on the loss of several customers of Haskell and the most recent financial results.

7. A September 13, 2002 fax from David Shane Smith to Robert H. Miller enclosing the Income Statement for Haskell Chemical Co. Inc. for the nine month period ending June 30, 2002.

For Defendants HH, Inc. and
Liquidating Trust for Assets and Liabilities of HH, Inc.:

1. Financial information contained in a letter dated May 7, 2001 from David Shane Smith to James A. Williams, EPA. This letter also enclosed the following information:

- A completed "financial statement of corporate debtor" signed by Richard H.B. Haskell, Trustee on 5/7/01.

- A copy of the agreement creating the Liquidating Trust for Assets and Liabilities of HH, Inc.

- A supplement to the HH Site Participation Agreement and pursuant to that agreement a print out dated 5/12/01 showing the payments made to Hatcher-Sayer.

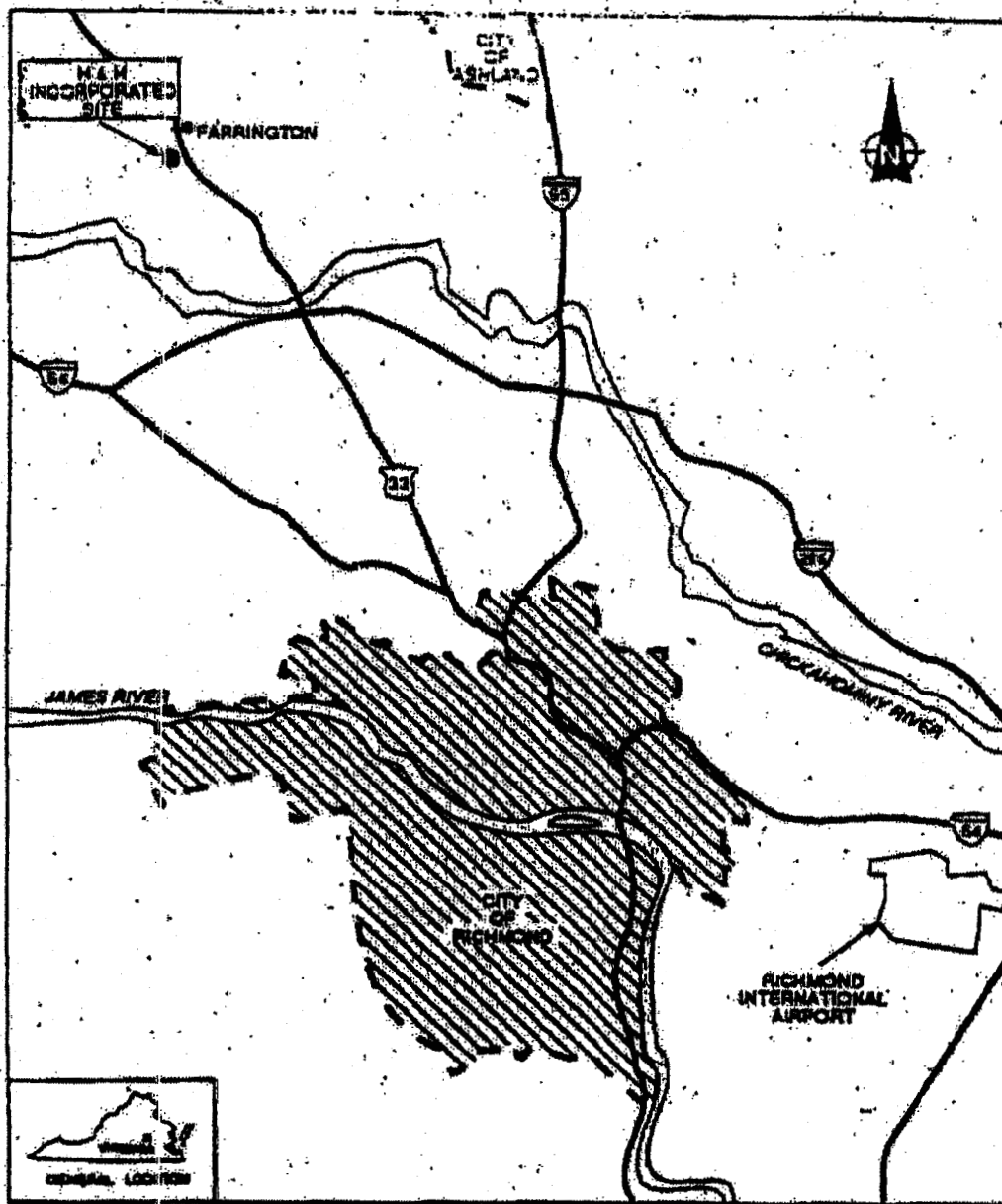
- U.S. Income tax returns for Estates and Trusts (1041's) for the years 1995 thru 1999.

2. From the January 14, 2002 letter from David Shane Smith to Robert H. Miller, DOJ:

- Exhibit H which is the real estate tax bill that includes the assessed value of the property owned by the Trust.

3. A print out dated October 4, 2002 documenting the payments made relative to the HH Site Participation Agreement.

APPENDIX B MAP OF THE SITE



SOURCE: Ecology and Environment, Inc. 1998

SCALE

0 2.5 5 Miles

Figure 1
H&H INCORPORATED
SITE LOCATION MAP

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 3:03CV642

HASKELL CHEMICAL COMPANY, INC.;

HH, INC., a dissolved corporation;

RICHARD H. B. HASKELL, as co-trustee of the
Liquidating Trust for Assets and Liabilities of
HH, Inc.;

and

ANN H. HASKELL, as co-trustee of the
Liquidating Trust for Assets and Liabilities of
HH, Inc.

Defendants,

**STIPULATION AND ORDER DIRECTING DEPOSIT OF FUNDS
INTO A BUSINESS INVESTORS' DEPOSIT ACCOUNT**

WHEREAS, the United States, Haskell Chemical Company, Inc., HH, Inc. and the Trustees for the Liquidating Trust for Assets and Liabilities of HH, Inc. ("the Parties") wish to resolve the issues presented to this Court in the above-captioned action;

WHEREAS, the Parties have simultaneously lodged a consent decree settling their respective claims;

WHEREAS, such consent decree will be lodged with the Court for a minimum of thirty days while non-parties are permitted to comment upon its terms, pursuant to federal regulations; and

- 2 -

WHEREAS, the Parties agree that the funds described in this Stipulation shall be deposited into a Business Investors' Deposit Account in BB&T, established in conformance with U.S. Treasury Circular 176, to be there held pending finalization and entry of a consent decree;

IT IS HEREBY STIPULATED AND AGREED as follows:

1. Haskell Chemical Company, Inc. shall make a payment of \$100,000 to the Clerk of the Court, and the Trustees of the Liquidating Trusts for Assets and Liabilities of HH, Inc. shall, on behalf of HH, Inc., make a payment of \$235,000 to the Clerk of the Court. Both payments shall be in the form of a cashier's or bank check made payable to "Clerk, U.S. District Court" on or before August 20, 2003. The Clerk of the Court shall deposit such funds into a Business Investors' Deposit Account at BB&T ("Account") pursuant to U.S. Treasury Circular 176.

2. Stipulated Penalties

a. In the event that Haskell Chemical Company, Inc. fails to make all or part of the aforementioned payment of \$100,000 on or before August 20, 2003, it shall be liable for a stipulated penalty to the United States of \$500 per day that payment is made after August 20, 2003. In the event that the Trustees of the Liquidating Trust for Assets and Liabilities of HH, Inc. fail to make all or part of the aforementioned payment of \$235,000 on or before August 20, 2003, they shall be liable for a stipulated penalty to the United States of \$500 per day that payment is made after August 20, 2003.

b. Stipulated penalties are due and payable within thirty (30) days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by cashier's or certified check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying

- 3 -

the check, shall reference the name and address of the party making the payment, the Site name, EPA Region III and Site Spill ID Number 03N7, and DOJ Case Number 90-11-3-1408/2, and shall be sent to:

U.S. EPA Region III
ATTENTION: Superfund Accounting
Box 360515
Pittsburgh, PA 15251-6515

c. At the time of each payment, the party making such payment shall send written notice that payment has been made to the individuals at the addresses specified below:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-1408/2

As to EPA:

Andrew S. Goldman (3RC41)
Sr. Assistant Regional Counsel
1650 Arch Street
Philadelphia, PA 19103-2029

Barbara Borden (3PM30)
Office of the Regional Comptroller
1650 Arch Street
Philadelphia, PA 19103-2029

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified the party failing to make the payment as provided herein of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Stipulation and Order and/or any other agreement between the Parties.

- 4 -

3. The undersigned counsel, representing the Parties, hereby request that this Court approve this Stipulation and Order, authorizing the Clerk of Court to deposit the funds into the Account, into which the aforementioned sums shall be deposited, and from which the entire Account balance shall be released upon further order of this Court as follows:

a. Upon the entry of a consent decree executed by the Parties, the Clerk of the Court shall pay the Account balance, less the Registry Assessment fee, by check payable to "U.S. Department of Justice" and shall be delivered to the attention of the "Financial Litigation Unit, U.S. Attorney's Office, 101 West Main Street, Suite 8000, Norfolk, Virginia 23510," referencing the EPA Region III, Site Spill ID Number 03N7, and DOJ Case Number 90-11-3-1408/2, pursuant to the terms of such consent decree;

b. Upon a finding by the Court in this action that the consent decree will not be entered, the Clerk of the Court shall return the Account balance, less the Registry Assessment fee, to Haskell Chemical Company, Inc. and the Trustees of the Liquidating Trust for Assets and Liabilities of HH, Inc., respectively;

c. Eighteen months after the close of the public comment period, if the Consent Decree has not yet been entered by the Court, Defendants in this action may request a hearing before the Court at which they may show cause why the Account balance should be returned to them, provided that the United States is given an opportunity at such hearing to show cause why the funds should not be returned;

d. Regardless of which party ultimately receives the funds in the Account, the Clerk's registry assessment fee, as prescribed by the Judicial Conference of the United States

- 5 -

and published in the Federal Register, shall be paid to the Clerk out of any interest that accrues on the principal.

- 6 -

FOR PLAINTIFF UNITED STATES OF AMERICA:

THOMAS SANSONETTI
Assistant Attorney General
Environment and Natural
Resources Division
United States Department of Justice

DANIEL S. SMITH
NANCY FLICKINGER
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PAUL MCNULTY,
United States Attorney
Eastern District of Virginia

By: **ROBERT P. MCINTOSH**
Assistant United States Attorney
Office of the United States Attorney
1800 Main Street Centre
600 East Main Street
Richmond, Virginia 23219
Telephone: (804) 819-7404

- 7 -

**FOR HASKELL CHEMICAL COMPANY, INC., HH, INC. AND THE TRUSTEES FOR THE
LIQUIDATING TRUST FOR ASSETS AND LIABILITIES OF HH, INC.,**

DAVID SHANE SMITH, Esq.
P.O. Box 27828
Richmond, VA 23261
(804) 771-5720

Counsel for Defendants

* * * * *

SO ORDERED BY THE COURT:

United States District Judge

Date Entered: _____